IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Misc. Application No. 430 of 2006

Date of Decision: 30-6-2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 30-6-206 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 430 of 2006

1. Digpal Singh Latwal
S/o Late Sri Laxman Singh Latwal
& 4 others ...Applicants

Versus

1. State of Uttaranchal
2. Con. No. 443 Rakesh Chadnra Dimri
Thana Ramnagar,
District- Nainital ....Respondents

Sri Vijay Pal Singh, learned counsel for the applicants.
Sri Amit Bhatt, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

The petition u/s 482 Cr.P.C. has been filed to quashing the chargesheet and order dated 15.09.2005 passed by the learned Judicial Magistrate, Ramnagar in Criminal Case No. 672 of 2004 u/s 147, 308 and 323 I.P.C., Police Station-Ramnagar, District Nainital.

It is alleged in the F.I.R. that Rakesh Chandra Dimri was on duty at Ranikhet Bus Stand and he got information that two persons are quarreling in front of the English wine shop. He alongwith constable Narender Chandra reached at the spot and tried to settle the matter and thereafter he came to the bus stand after 20-25 minutes. When he reached at the bus stand against he saw the constable Mahesh Bhatt was being assaulted by the accused-applicants. Constable Rakesh Chandra Dimiri tried to rescue the constable Mahesh Bhatt, the accused-applicants fled away from the spot and left the constable Mahesh Bhatt in a precarious condition at the spot. Thereafter report was lodged and medical was conducted. Thereafter, the matter was investigated and the chargesheet was submitted before the court. The Magistrate took the cognizance against the present accused-applicants. Feeling aggrieved by the submission of the chargesheet as well as the cognizance order, the present petition has been preferred.

Heard learned counsel for the applicant and learned A.G.A. and perused the record.

It was contended on behalf of the learned counsel for the applicants that the present petition has been filed due to the malafide intention as such the accused-applicants have been falsely implicated in this matter to save themselves from the criminal case lodged by Narendra Latwal s/o Bhagwant Singh Latwal. The criminal case was lodged u/s 147, 323 and 392I.P.C. on 19.09.2004. It was contended that they have been assaulted badly and they have sustained the injuries and medical certificates to that effect have been filed alongwith this petition. The matter was under investigation. On the last date, the State was asked to submit the status report of the said case. The State submitted a short counter affidavit in which State have stated that during the investigation no evidence was made available against the constable Mahesh Bhatt and besides other accused persons namely Constable Tarun Pandey and Constable Kishore Pant also came into light. After completing the investigation, chargesheet No.63 of 2006 dated 14.04.2006 u/s 147, 323 & 325 I.P.C. had been filed before the learned Judicial Magistrate, Ramnagar on 18.0-4.2006 against the above accused persons excepting Constable Mahesh Bhatt. It was further contended that the present complaint has been filed maliciously. It was contended that there were only oral averments against the present accused-applicants, as such, the complaint is totally false. In R.D. Kapur Vs. State of Punjab A.I.R. 1960 SC 866, the court has summarized the following three grounds on which the court can exercise the jurisdiction u/s 482 Cr.P.C.:-

i. Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

ii. Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

iii. Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Perusal of the pleadings of the parties revealed that both the parties have reported the matter and both the parties have sustained the injuries and assaulted each other. Thus there is cross version of the incident. If the cross version is there, the trial court has to see who is the aggressor in this matter. This question can only be decided by the trial court. This question cannot be decided by way of petition u/s 482 Cr.P.C. It is also settled principle of law that if the material has been collected during the investigation and he fate of the accused person can only be decided by the trail court in such cases. If the prima-facie offence is there, then the malafidy of the informant would be a secondary importance. The allegations of malafidy against the accused are of no consequence at this stage and mere allegation cannot be the basis of quashing the proceedings. As such, I do not find any force in the contention of the learned counsel for the accused-applicants.

In view of the above, the petition devoid of merit is liable to be dismissed and the same is dismissed accordingly.

(J.C.S. Rawat, J.)

30th June, 2006
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